



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/729,172	12/05/2003	Carsten M. Hjort	5555.410-US	8578
25908 7590 02/22/2010 NOVOZYMES NORTH AMERICA, INC. 500 FIFTH AVENUE SUITE 1600 NEW YORK, NY 10110				
EXAMINER				
KETTER, JAMES S				
ART UNIT		PAPER NUMBER		
1636				
NOTIFICATION DATE		DELIVERY MODE		
02/22/2010		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Patents-US-NY@novozymes.com

### Office Action Summary

**Application No.**

10/729,172

**Applicant(s)**

HJORT ET AL.

**Examiner**

James S. Ketter

**Art Unit**

1636

**Period for Reply** -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 23 November 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 51, 54-57 and 61-78 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 68-78 is/are allowed.
- 6) ☒ Claim(s) 51, 54-57 and 61-65 is/are rejected.
- 7) ☒ Claim(s) 66 and 67 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 05 December 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Drafts/Person's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 11/19/09
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Claims 66 and 67 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims. Claims 68-78 are allowed.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 51, 54-57 and 61-65 are rejected under 35 U.S.C. 102(b) as being anticipated by GenEmbl accession number AB021876.

Priority for SEQ ID NO:48 is accorded only to the parent application, 09/525,305, which has a filing date of 14 March 2000. GenEmbl accession number AB021876 was entered into the database on 25 December 2998.

Claim 51 is drawn to an isolated nucleic acid sequence, which comprises a sequence encoding a polypeptide that has transcriptional activation activity, wherein the sequence encodes a polypeptide having an amino acid sequence that is at least 95% identical with the amino acid sequence of SEQ ID NO: 49. Claim 54 specifies within claim 51 that the sequence comprises a sequence encoding a polypeptide having an amino acid sequence that is at least 97% identical with the amino acid sequence of SEQ ID NO: 49. Claim 55 specifies within claim 54 that the sequence encodes a polypeptide having an amino acid sequence that is at least 99% identical with the amino acid sequence of SEQ ID NO: 49. Claim 56 specifies within claim 51 that the

sequence encodes a polypeptide comprising the amino acid sequence of SEQ ID NO: 49. Claim 57 specifies within claim 56 that the sequence encodes a polypeptide consisting of the amino acid sequence of SEQ ID NO: 49. Claim 61 specifies within claim 51 that the sequence is obtained from an *Aspergillus* cell. Claim 62 specifies within claim 61 that the *Aspergillus* cell is an *Aspergillus oryzae* cell. Claim 63 specifies within claim 61 that the *Aspergillus* cell is *Aspergillus oryzae*, IFO 4177. Claim 64 specifies within claim 51 that the nucleic acid sequence is obtained from an *Aspergillus*, *Fusarium*, *Penicillium* or *Trichoderma* cell. Claim 65 is drawn to a construct comprising the nucleic acid of claim 51 operably linked to one or more control sequences, which direct the production of the polypeptide in a suitable expression host.

Accession number AB021876 discloses a sequence representing an isolated DNA molecule which comprises the entire sequence of SEQ. ID NO:48, and thus anticipates the instant claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James S. Ketter whose telephone number is 571-272-0770. The examiner can normally be reached on Monday-Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Low can be reached on 571-272-0951. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

JSK  
19 February 2010

/James S. Ketter/  
Primary Examiner, Art Unit 1636